

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

. . . . .  
BARBARA E. VARNER, .  
Plaintiff, . CIVIL ACTION  
 . NO. 1:CV 01-0725  
vs. .  
 .  
COMMONWEALTH OF PENNSYLVANIA, . (JUDGE YVETTE KANE)  
NINTH JUDICIAL DISTRICT, .  
CUMBERLAND COUNTY; CUMBERLAND .  
COUNTY; S. GARETH GRAHAM, .  
Individually, and JOSEPH .  
OSENKARSKI, individually, .  
Defendants. .  
. . . . .

Deposition of: HON. GEORGE E. HOFFER

Taken by : Defendant Cumberland County Court

Date : April 4, 2003, 1:46 p.m.

Before : Emily Clark, RMR, Reporter-Notary

Place : Cumberland County Courthouse  
One Courthouse Square  
Carlisle, Pennsylvania

APPEARANCES:

DEBRA K. WALLET, ESQUIRE  
For - Plaintiff

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS  
BY: A. TAYLOR WILLIAMS, ESQUIRE  
For - Defendant Commonwealth of Pennsylvania  
Ninth Judicial District, Cumberland County

THOMAS, THOMAS & HAFFER  
BY: JAMES K. THOMAS, II, ESQUIRE  
PAUL J. DELLASEGA, ESQUIRE  
For - Defendant Cumberland County

1 APPEARANCES (continued):

2 MONTGOMERY, McCracken, Walker & Rhoads, LLP  
3 BY: L. Kristen Blanchard, Esquire  
4 For - Defendant S. Gareth Graham

5 SWEENEY & SHEEHAN, P.C.  
6 BY: Paul Lancaster Adams, Esquire  
7 For - Defendant Joseph L. Osenkowski

8  
9 ALSO PRESENT:

10 MS. BARBARA E. VARNER

11 MR. S. GARETH GRAHAM

12 MR. JOSEPH L. OSENKARSKI

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## 1 I N D E X

## 2 WITNESS

3	Hon. George E. Hoffer	Examination
4	By Ms. Wallet	4, 78
5	By Mr. Dellasega	66
6	By Ms. Blanchard	77

7  
8 EXHIBITS

9	No. Description	Identified
10	1 5 pages, handwritten notes	9
11	2 2-page memo, 3/31/98, to Osenkarski from Varner	31
12	3 1-page "Personnel Action Form"	33
13	4 1-page handwritten letter, 6/1/98, to Osenkarski from Varner	41
14	5 3 pages, handwritten notes	42
15	6 2 pages: 1-page memo, 2/11/98, to Hoffer from Hartnett; 1-page memo, 2/4/98, to Hartnett from Varner	49
16	7 2-page letter, 3/3/98, to Hartnett from Varner	50
17	8 1 page, handwritten notes, 3/4/98	51
18	9 1-page letter, 2/16/99, to Varner from Hoffer	54
19	10 1 page, handwritten notes	55
20	11 1-page memo, 3/27/92, to Hoffer from Varner	57
21	12 1-page memo, 4/5/02, to Varner from Miller	59

25 \* \* \* \* \*



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1 and I have problems with my ears.

2 Q I'll do what I can, sir. If at any time you can't hear  
3 me, just stop and I'll be happy to repeat it. However,  
4 I must have an agreement with you that if you do answer  
5 a question, that you have both heard that question and  
6 then that you have understood it. Is that agreed?

7 A. Yes, ma'am.

8 Q Tell me, sir, what did you do to prepare for this  
9 deposition today?

10 A. I suppose I reviewed my file. Reviewed whatever counsel  
11 sent to me.

12 Q Did you -- I'm sorry? Were you finished?

13 A. Um-hum.

14 Q Did you review any of the transcripts from the prior  
15 testimony of other witnesses in this case?

16 A. Judge Sheely's.

17 Q Any others?

18 A. Not that I recall.

19 Q Did you talk to any witnesses before today in  
20 preparation for today?

21 A. No, ma'am.

22 Q Would you tell me, sir, when you first learned that  
23 Barbara Varner had made allegations against Joe  
24 Osenkowski and Gary Graham?

25 A. That would have been either when I took over as

- 1           president judge, or if it was earlier, it would have  
2           been after Judge Sheely told me about his conversation  
3           with Gary Graham, one of the two.
- 4       Q     All right. Did you at some time after becoming  
5           president judge review the allegations that she, Barbara  
6           Varner, had made?
- 7       A.    In what form, ma'am?
- 8       Q     In written form.
- 9       A.    You mean a Complaint?
- 10      Q     Or some memorandum spelling out --
- 11      A.    I don't think I saw a Complaint until after it was  
12           filed, whenever that was.
- 13      Q     And when you say a Complaint, you're speaking of the  
14           Complaint that was filed in federal court?
- 15      A.    Yes, ma'am.
- 16      Q     Do you remember reviewing any memoranda that Barbara  
17           Varner had written regarding her allegations against  
18           Mr. Graham or Mr. Osenkowski?
- 19      A.    Graham per se?
- 20      Q     Yes, sir.
- 21      A.    I have no recollection there, ma'am.
- 22      Q     When you assumed the position of president judge, and I  
23           believe that was on January 1st of 1998; is that  
24           correct?
- 25      A.    The first Monday in January.

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- 1 Q Okay. Do I have the year correct, 1998?
- 2 A. '98.
- 3 Q After you became president judge, what did you
- 4 understand the status of Ms. Varner's allegations to be
- 5 at that time?
- 6 A. I think I knew she filed a Complaint with the EEOC. Is
- 7 that the correct initials?
- 8 Q Yes, sir.
- 9 A. And I suppose that's the extent of it.
- 10 Q After you became president judge, did you do anything to
- 11 investigate the allegations that Ms. Varner had made
- 12 against Mr. Graham?
- 13 A. Yes, ma'am.
- 14 Q What did you do?
- 15 A. After I took over, I had reference to a report done by
- 16 the county. I examined that report.
- 17 Q What was your understanding of the role of the county
- 18 with regard to that report?
- 19 A. I don't understand your question.
- 20 Q Did you know whether the Court had designated someone to
- 21 investigate these allegations?
- 22 A. The Court meaning myself or Judge Sheely?
- 23 Q Either.
- 24 A. I know I didn't, ma'am. What Judge Sheely did is best
- 25 known to him. I don't believe so.

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1 Q Did you at any time, sir, hire an investigator to  
2 investigate the allegations brought by Barbara Varner?

3 A. No.

4 Q Now, this report that you had referenced that was done  
5 by the county, is that the report done by Mr. Deluce?

6 A. Yes, ma'am.

7 Q Are you aware of any other reports done by the county to  
8 which you had access when you became president judge?

9 A. No, ma'am.

10 Q So you reviewed this report from David Deluce. Did you  
11 do anything else by way of your investigation?

12 MR. THOMAS: When?

13 BY MS. WALLET:

14 Q At that time when you became president judge.

15 A. Over a period of time, did something, yes.

16 Q Okay.

17 A. It didn't all happen in one day.

18 Q What did you do in response to the Deluce report?

19 A. Well, I know I had certain of the officers up to talk to  
20 them about the report.

21 Q Who?

22 A. I have a note somewhere.

23 Q Well, we were given some notes that were provided to us  
24 by your counsel, and some of these notes I'm not sure I  
25 understand so I was going to ask you about them. If you



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1 would like to look at what I've made as copies of these  
2 notes and tell me which ones --

3 A. What you're referring to would be on one sheet with some  
4 names on it, ma'am, on the left-hand side of the sheet.

5 Q All right. Would this be the sheet, sir?

6 A. I think so.

7 MS. WALLET: Let's mark for identification as  
8 Hoffer Deposition No. 1 a couple of sheets stapled  
9 together. I've attempted to copy them together as they  
10 were given to me, but you may have to explain to us  
11 whether they are related or not related.

12 (Hoffer Deposition Exhibit No. 1 was marked.)

13 MS. WALLET: I've handed the witness what we've  
14 marked for identification as Hoffer Deposition No. 1.

15 BY MS. WALLET:

16 Q Could you go through this document, please, and tell  
17 me whether all of these are notes in your handwriting?

18 A. Exhibit 1 is in my handwriting.

19 Q Okay. Is that true with respect to all of the pages in  
20 Exhibit 1?

21 A. They're all in my handwriting.

22 Q Okay. Judge, were --

23 A. They're not necessarily compiled in the order that I  
24 compiled them, though, ma'am.

25 Q All right. Can you explain to me what these notes

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1 reflect?

2 A. Well, I suppose to put them in the correct order would  
3 be page 3 of this exhibit with the individual names on  
4 it.

5 Q All right. Let's start with that one.

6 A. And my recollection is those would have been people I  
7 asked to come up to my office to talk to.

8 Q Okay. There are checkmarks by some of these names. Is  
9 there any significance to those checkmarks?

10 A. My recollection would be that those people actually came  
11 into the office, not necessarily the others.

12 Q Did you speak to everyone on this list?

13 A. I can't tell you, ma'am.

14 Q Why can't you tell us?

15 A. Well, as I tried to tell you, if I checkmarked the name,  
16 I believe I had them in my office to talk to them. If I  
17 didn't checkmark the name, they may not have been into  
18 my office to talk to me.

19 Q All right. If these notes were in the correct order  
20 what would be the next page?

21 MR. ADAMS: Can we all agree as counsel to whatever  
22 order the judge puts them in from his mind-set and the  
23 chronology of the testimony, put them in that proper  
24 order as an exhibit? For example, just unstapled and  
25 make this 1, 2, for whatever pages? As he goes through

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1           them?

2                   MS. WALLET: Doesn't matter to me.

3                   THE WITNESS: If that's important. I didn't hear  
4           what he said.

5                   MS. WILLIAMS: We could do Exhibit 1A, B, C, D, E,  
6           would that help?

7                   MR. ADAMS: And the way he's testifying I'd like  
8           them in that order, that's all.

9                   MS. WALLET: We'll label the page with the list of  
10          names and the checkmarks as A.

11                  THE WITNESS: Your question?

12   BY MS. WALLET:

13   Q       My question is: Which page should come next?

14   A.       It would either be the two pages marked Nick, or the one  
15           marked Debbie Green.

16   Q       Let's mark the first page B1 the second page B2 and the  
17           one marked Debbie Green, C. Is that acceptable?

18                  I take it that B1 and B2 indicate your notes from  
19           when you spoke to Nick who?

20   A.       That would have been Nick Barolet, I believe. It's the  
21           only Nick I have. And he's since left the office.

22   Q       Who was Mr. Barolet?

23   A.       A PO.

24   Q       Frankly, sir, I can't read your handwriting, and I'm  
25           hoping that you can simply read this for us before we

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1 begin. Would you do that?

2 A. You want me to read from the top on Nick?

3 Q Correct.

4 A. "Boyer doesn't know what he is doing. Good as  
5 administrator. Should Tom do some cases. Debbie  
6 Reitzell over her --" this is from Nick Barolet "-- over  
7 her head. Gary made lewd comments." Inartful English on  
8 my part.

9 "No policies or procedures manual, no standard of  
10 operations. No staff meetings. Need explanations on  
11 memos." Or is that "or memos," I'm not sure. "Have  
12 meetings every two months."

13 "When Graham had Nick and Varner he had different  
14 standards for the both of them."

15 Page 2 of Nick. "They're doing full-blown social  
16 history on informal probations. Not necessary.  
17 Atmosphere is tense. Tom Boyer has different standards  
18 than Gary. All standards should be the same."

19 These are suggestions made by Barolet in response  
20 to my asking him for suggestions.

21 Q All right. Are you able to pinpoint for us a date or a  
22 time frame when you met with Nick Barolet?

23 A. The time frame would have been between the first day  
24 that I took over and the date that I demoted Gary  
25 Graham.

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1 Q So sometime between January and mid March of 1998? That  
2 was a question, sir.

3 A. Yes.

4 Q Now, how did you arrive at the list that is contained on  
5 page A of Deposition 1?

6 A. I can't be sure, ma'am.

7 Q Did someone suggest to you that you talk with these  
8 people? Or was that your idea?

9 A. I doubt if anybody suggested it. It would have been my  
10 idea. If anything, I got the names out of the report.

11 Q Okay.

12 A. That would have been the logical place for me to get  
13 them.

14 Q At that time did you meet with Barbara Varner?

15 A. Her name's not on the list, so I didn't meet with her.

16 Q Did you meet with Gary Graham?

17 A. If his name's not on the list, I didn't meet with him.

18 Q Why didn't you meet with Barbara Varner at that time?

19 A. I don't understand your question, ma'am. Why didn't I  
20 meet with her?

21 Q She was the one making the allegations. Why didn't you  
22 meet with her and ask her about those allegations?

23 A. I met with people who I wanted to find out about what  
24 they said in the report.

25 Q Were there any statements from Ms. Varner in the report?

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1 A. I don't have any recollection about that. I suppose so,  
2 but I don't recollect.

3 MR. THOMAS: Once again, let me interpose the  
4 objection to the report. We'll interpose our objection  
5 to that based on attorney-client privilege and attorney  
6 work product. And I've let you ask a couple of  
7 questions about it without waiving that objection, but I  
8 will object and instruct the witness not to answer  
9 questions dealing with the content of the Deluce report.

10 BY MS. WALLET:

11 Q Judge Hoffer, was David Deluce acting as your attorney  
12 at the time?

13 A. No, ma'am. No, ma'am, absolutely not.

14 MR. THOMAS: I would point out for the record at  
15 that point that the plaintiff in this case has made an  
16 allegation that this was joint employment, and  
17 Mr. Deluce, of course, was employed by the county. And  
18 it's the plaintiff's allegations that contend that this  
19 was a joint employment situation.

20 BY MS. WALLET:

21 Q Do you know whether or not Mr. Graham had made some  
22 statements that were contained in this report?

23 MR. THOMAS: Again, I would object to asking this  
24 witness questions about the content of that report and I  
25 would instruct him not to answer.

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1 THE WITNESS: I don't recollect.

2 MS. WILLIAMS: Your Honor, we're not going to  
3 answer questions about the report specifically. So  
4 we'll wait for the next question.

5 THE WITNESS: All right.

6 BY MS. WALLET:

7 Q Do you consider Mr. Thomas to be your attorney today?

8 A. Absolutely not.

9 MS. WILLIAMS: I will state for the record that  
10 because of the joint employment situation, we have  
11 joined Mr. Thomas in the objection to the Deluce report,  
12 and we have in the past instructed other witnesses not  
13 to answer questions on that report and we're so doing  
14 today.

15 BY MS. WALLET:

16 Q I'm back to the list, sir. Do I understand from what  
17 you've testified to earlier that in or about the time  
18 frame between January and March of 1998 you talked to  
19 Bill Brandt, Debbie Green, Nick Barolet, Jenny Crum, is  
20 it?

21 A. Looks like C-R-U-M-B.

22 Q C-R-U-M-B?

23 A. That's what it looks like to me.

24 Q Okay. Mrs. Rose. Anyone else?

25 A. I just have no way to recollect anymore, ma'am.

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1 Q Now, you have two pages of notes about your meeting with  
2 Mr. Barolet and we have at least one page of notes of  
3 meetings with Debbie Green.

4 To the best of your knowledge, sir, are there any  
5 other notes of meetings that took place in this time  
6 frame?

7 A. Again, ma'am?

8 Q To the best of your recollection, do you have any other  
9 notes of any of your meetings with these individuals  
10 whose names are checked?

11 A. Brandt, Crum and Mrs. Rose. No, ma'am. No notes.

12 Q Who is Jenny Crum?

13 A. I think she was an office secretary, but I'm not sure  
14 about that.

15 Q How about Mrs. Rose?

16 A. Mrs. Rose, definitely an office secretary.

17 Q Is there a reason why you would have taken notes during  
18 some of these meetings and not others?

19 A. Well, in Barolet's case I think I knew that Nick was  
20 leaving for another job, or had reason to believe that  
21 he was leaving, I'm not sure. But I wanted to get ideas  
22 from him about what changes he thought we should make  
23 down there for the better, and most of the notes are to  
24 do with that.

25 Q Okay. Do you recall today, sir, what Mr. Barolet told



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1           you about the comments that caused you to make the  
2           notation Gary made lewd comments?

3       A.    No independent recollection of anything other than what  
4           my note says. And remember, this was Nick reporting  
5           something that he heard from somebody else.

6       Q    When Nick told you that the atmosphere was tense, was  
7           tense between whom?

8       A.    In the office.

9       Q    Did you do anything as a result of the statements that  
10          you obtained from Nick Barolet?

11      A.    Well, do you want to get specific, ma'am?

12      Q    Well, after Mr. Barolet told you certain things, did it  
13          cause you to take some action?

14      A.    Later on after Gary's demotion I called a total staff  
15          meeting in the Human Services Building and said some  
16          things that were on my mind, including the operation of  
17          the office, what I expected.

18      Q    When you say a total staff meeting, you mean with all of  
19          the Probation officers?

20      A.    As far as I know, everyone was there that was in  
21          Juvenile Probation. Certainly that was my intention to  
22          have everyone there.

23      Q    Was it just the professional staff, or did it include  
24          the clerical staff?

25      A.    I don't think the secretaries were there. At least I

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1 don't have any recollection of them being there.

2 Q And was it all of the probation officers, both Juvenile  
3 and Adult?

4 A. Only Juvenile.

5 Q What, if you recall today, did you tell them at that  
6 staff meeting?

7 A. Looking back on everything, ma'am, I probably should  
8 have had a stenographer there. But I don't have too  
9 much of an independent recollection. It was kind of a  
10 pep talk, there were elements of that in it. There were  
11 elements of I want everybody to pick up the professional  
12 level. I explained some things that I didn't like that  
13 were going on and I didn't expect them to happen again.

14 I do remember telling them if I have to micromanage  
15 this office, I'll do it, but I didn't want to do it.  
16 That's one of the big things I remember saying. How big  
17 it was, I don't know.

18 Q Did this meeting with the staff occur before or after  
19 you transferred Mr. Graham?

20 A. Oh, I think it would have been after.

21 Q Was Mr. Graham there?

22 A. No.

23 Q Did you say anything at this meeting about sexual  
24 harassment?

25 A. I have no recollection, ma'am. I've told you the best

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1 recollection I have on what I said.

2 Q Let's go back to Deposition No. 1. Would you read for  
3 us your notes concerning your conversation with Debbie  
4 Green?

5 MR. ADAMS: What are we calling that?

6 MR. THOMAS: C.

7 MS. WALLET: C.

8 MR. ADAMS: Okay.

9 THE WITNESS: "Debbie Green," circle drawn around  
10 it, "said Nicole was told by Graham six months ago I'll  
11 get everyone back. Debbie," I guess this is was in  
12 response to a similar type question I put to Nick  
13 Barolet, do you have any changes down there, is there  
14 anything we can do better than we're doing. Ms. Green  
15 suggested that we didn't have any guidelines -- she  
16 said, quote, "no guidelines on how to do a social  
17 history." My independent note is "subject for a staff  
18 meeting."

19 "Saw Gary grab Barbara's butt several years ago.  
20 Has singled Barb out for trips. Office is more tense  
21 with Gary around. Tom Boyer not up on placements work.  
22 Says Gary must go, too tense."

23 Q Do you believe those notes accurately reflect what  
24 Ms. Green told you in that time frame?

25 A. I have no reason not to, ma'am. These are my notes, I

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1 wrote them down.

2 Q Do you agree she may have told you additional things but  
3 these are the only subjects you wrote down?

4 A. I don't disagree with that statement.

5 Q All right. Were you concerned, sir, when Debbie Green  
6 told you that Graham apparently told Nicole that he  
7 would get everyone back?

8 A. If it was true, of course.

9 Q Did the county or the Court at that time have a policy  
10 with regard to workplace violence?

11 A. Yes, ma'am.

12 Q Could you explain for me, did you as the president judge  
13 issue policies or procedures independent of the county?

14 A. No, ma'am.

15 Q What was your understanding of the applicability of the  
16 county's policy and procedures to the probation  
17 officers?

18 A. They applied.

19 Q Did you have the ability not to apply those policies and  
20 procedures to the probation officers?

21 A. Did I have the ability to disregard the county book? Is  
22 that what you're asking me?

23 Q Yes sir.

24 A. No, I never felt I had.

25 Q I guess maybe the better word would be authority as

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1           opposed to ability.

2       A.     Oh.

3                   MS. WILLIAMS: Maybe you could rephrase that  
4           question, make it a little clearer for the judge.

5       BY MS. WALLET:

6       Q     Did you believe that the probation officers were bound  
7           by the policies issued by the county?

8       A.     As far as the behavior is concerned, yes, ma'am.

9       Q     Did you believe that you as the president judge had the  
10          authority to issue different policies or contradictory  
11          policies?

12      A.     I would imagine I did. I would have had, since I hired  
13          and fired everybody.

14      Q     Did you ever choose to do that?

15      A.     No, ma'am.

16      Q     You may not know, but we had the deposition this morning  
17          of Bill Brandt. He said that you called him into your  
18          chambers and talked with him at some length about what  
19          was happening in the Probation office. Do you agree  
20          with that?

21      A.     He's on the list, he's checked. I talked to him.

22      Q     Do you have any recollection today of what Mr. Brandt  
23          told you in response to your questions of Mr. Brandt?

24      A.     No, ma'am.

25      Q     You don't remember anything that he told you?

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- 1 A. I have no independent recollection of it, ma'am. I  
2 didn't keep any notes of the meeting.
- 3 Q When did you -- well, let's finish this exhibit.  
4 There's a fourth page that looks like for John Ward or  
5 from John Ward?
- 6 A. Um-hum.
- 7 Q Does that appropriately go with the rest of these  
8 documents? Or is that something different?
- 9 A. That's later.
- 10 Q Okay. Can you give me a time frame for what we'll mark  
11 as page D?
- 12 A. This would have been shortly before I demoted Gary.
- 13 Q So after you had the conversations with Ms. Green and  
14 Mr. Barolet?
- 15 A. Oh, yes.
- 16 Q Could you read for us what you say in D?
- 17 A. "For John Ward, what I want," full colon, "1, a new  
18 position at jail for a supervising PO, and an office,"  
19 at the jail.
- 20 "2, a new position in Juvenile Probation to fill  
21 Graham's spot," dash, "even if he quits."
- 22 Q Okay. Did you prepare this document, Deposition 1 sub  
23 D, during your meeting with Mr. Ward, or in anticipation  
24 of the meeting with Mr. Ward?
- 25 A. It would have been in anticipation of any meeting with

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- 1 John Ward.
- 2 Q Did you, in fact, meet with him and discuss these issues
- 3 that are reflected here?
- 4 A. I'm sure I did. I don't have any recollection of it. I
- 5 don't have any notes of it. I got what I wanted.
- 6 Q All right. Why did you decide to send Mr. Graham to the
- 7 position at the jail?
- 8 A. What was your word?
- 9 Q Why?
- 10 A. I thought you said sentence.
- 11 Q Send. Let me start again. Why did you decide to send
- 12 Mr. Graham to a position at the jail?
- 13 A. I demoted him out of the office, the Probation office,
- 14 ma'am. He was gone.
- 15 Q My question, sir, is: Why did you do that?
- 16 A. Why did I demote him?
- 17 Q Yes, sir.
- 18 A. I lost confidence in him.
- 19 Q In what sense?
- 20 A. Well, you have the allegations of the Graham-Varner
- 21 affair. But even more importantly, I lost confidence in
- 22 his ability to lead.
- 23 Q Did he suffer a loss of pay as a result of this
- 24 demotion?
- 25 A. You'll have to ask him that, but I think he did.

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1 Q Was that your intention?

2 A. The pay had nothing to do with it, ma'am.

3 Q Were you able to fill Mr. Graham's spot in Juvenile

4 Probation?

5 A. I think so.

6 Q Did you fill it?

7 A. I think so.

8 Q Do you know who you filled it with?

9 A. We'll have to look at the records, ma'am. I don't

10 remember.

11 Q How did you give this notice to Mr. Graham that he was

12 going to be demoted?

13 A. What did I physically do?

14 Q Yes.

15 A. After I had made my mind up irrevocably on this, I

16 called him in at about quarter of 12:00 on a Monday and

17 told him.

18 Q What did you tell him?

19 A. I said: You're gone, take a couple days off, report to

20 I think John Roller for a new job. It was short and

21 sweet. It wasn't sweet, but it was short.

22 Q Did he make any response to you?

23 A. Unhappiness.

24 Q Did you tell him at that time that this action had

25 anything to do with the allegations that Barbara Varner



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25

1 had made?

2 A. I think the most I told him, ma'am, since this was a  
3 very short meeting: You have lost my confidence.

4 Q You don't recall telling Mr. Graham that it had anything  
5 to do with the Varner allegations?

6 A. You've heard the extent of what I remember, ma'am. It  
7 was my intention there was not going to be any  
8 discussion here. It was something I did and there  
9 wasn't going to be any debate about it.

10 Q Now, as a result of your discussing with the individuals  
11 listed on page A with the checkmarks, did you learn  
12 anything about the way in which Joseph Osenkarski was  
13 running the office?

14 A. Is he mentioned in those notes?

15 Q I don't see his name anywhere.

16 A. I don't have any recollection other than what I may have  
17 gotten out of the report.

18 Q Did you take any disciplinary action against Joe  
19 Osenkarski?

20 A. No, ma'am.

21 Q Why not?

22 A. I didn't do it. I didn't do it, ma'am. I did not take  
23 any action.

24 Q And I said, why not?

25 A. Ma'am, if I didn't take any action, it was a decision I

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1           made not to take any action.

2       Q       Did you have a reason?

3               MR. ADAMS:  Objection, asked and answered.

4               MS. WALLET:  Well, it's certainly been asked but I  
5       don't think it's been answered.

6               THE WITNESS:  Did I have a reason to do what,  
7       ma'am?

8       BY MS. WALLET:

9       Q       Not to take any disciplinary action against  
10       Mr. Osenkowski.

11      A.       Are you asking me if I've stopped beating my wife?

12      Q       No, sir.

13               MS. WILLIAMS:  Can you rephrase the question to  
14       make it more understandable?

15      BY MS. WALLET:

16      Q       Well, we know that you didn't take any disciplinary  
17       action against Mr. Osenkowski.  Correct?

18      A.       Yes, ma'am.

19      Q       And I'm asking you, why was there no disciplinary action  
20       taken against him?  Was it because you didn't think he  
21       had done anything to warrant such action?

22      A.       What was the charge, ma'am?

23      Q       Well, there were a number of charges that Ms. Varner had  
24       made against Mr. Osenkowski.  Were you aware of those at  
25       the time?

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- 1 A. Other than anything contained in the report, if  
2 anything, that would have been it.
- 3 Q So you relied on the information in the report for a  
4 summary of the allegations of Ms. Varner?
- 5 A. If there's anything in there, I suppose.
- 6 Q Other than sending Mr. Graham to a position at the jail,  
7 did you take any other disciplinary action against  
8 Mr. Graham?
- 9 A. We took his courthouse key away, if that's disciplinary  
10 action.
- 11 Q Why did you do that?
- 12 A. He didn't have any access to the courthouse anymore, he  
13 didn't work here.
- 14 Q Any other disciplinary action against Gary Graham?
- 15 A. None that I can recall, that I did.
- 16 Q Was there a sexual harassment policy in place when you  
17 came in as president judge in January, the first Monday  
18 in January of '98?
- 19 A. Any harassment policy would have been contained in the  
20 county manual.
- 21 Q Did you believe the probation officers to be bound by  
22 that sexual harassment policy?
- 23 A. Yes, ma'am.
- 24 Q Did you at any time tell Ms. Varner that she had failed  
25 to follow the sexual harassment policy that was in

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1 place?

2 A. No.

3 Q Sir, as an employer or supervisor, have you had any  
4 prior experience with sexual harassment claims?

5 A. In my life?

6 Q Yes, sir.

7 A. What do you mean experience, ma'am? I've read things in  
8 the paper, I've read books, I've read government  
9 policies.

10 Q My question was while you were an employer or a  
11 supervisor, did you have any experience with any sexual  
12 harassment claims?

13 A. No. I'm not aware of anything like that.

14 Q Were you aware that there was an allegation of sexual  
15 harassment brought by Kerry Houser against  
16 Mr. Osenkarski in the early '90s?

17 A. Oh, I have some vague recollection of that somehow.  
18 Somehow, somewhere.

19 Q Do you believe that you knew that that charge or  
20 allegation had been made when you conducted your  
21 interviews that are reflected in Deposition 1?

22 A. Would I have known about it at that time?

23 Q Yes, sir.

24 A. I don't have any recollection of that, ma'am.

25 Q After you demoted Mr. Graham, did you do anything else

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1 with regard to the allegations that Ms. Varner had made  
2 against Gary Graham?

3 MR. THOMAS: You mean other than the earlier  
4 testimony he gave?

5 MS. WALLET: Correct.

6 THE WITNESS: No.

7 BY MS. WALLET:

8 Q Did you consider the matter to be closed at that time?

9 MR. ADAMS: Objection as to form. What do you mean  
10 by closed?

11 BY MS. WALLET:

12 Q Did you think it was done and over?

13 A. Ma'am, I knew that an EEOC Complaint had been filed. It  
14 could have hardly been over.

15 Q Did you believe that you had any further obligation to  
16 investigate Ms. Varner's allegations?

17 A. On my own?

18 Q Yes, sir.

19 A. I did not do that, ma'am.

20 Q My question was: Did you feel you had an obligation to  
21 do anything further?

22 A. On my own? No.

23 Q Yes, sir.

24 A. No.

25 Q Sir, what do you know about the use of seniority for

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1 purposes of promotion within the Probation office at the  
2 time that you became president judge?

3 A. Zero.

4 Q Did you subsequently learn something about the seniority  
5 issue?

6 A. I have no recollection, ma'am.

7 Q Did you have any discussions with anyone about seniority  
8 county-wide versus that in the Probation office?

9 MR. THOMAS: Objection to the form. You may  
10 answer.

11 THE WITNESS: I have no recollection.

12 BY MS. WALLET:

13 Q Did you have any discussions with Mr. Osenkarski about  
14 the use of seniority for promotions within the Probation  
15 office?

16 A. I don't have any recollection of that, ma'am.

17 Q Did you have any discussions with Tom Boyer about that?

18 A. I don't remember anything there, either.

19 Q Did Ms. Varner bring to your attention the issue of the  
20 use of seniority?

21 A. In what fashion did she bring it to my attention?

22 Q I'm asking you, do you remember having anything brought  
23 to your attention by Ms. Varner about the seniority  
24 issue?

25 A. As we sit here, no.

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1 MS. WALLET: Let's mark as Deposition No. 2?

2 (Discussion held off the record.)

3 (Hoffer Deposition Exhibit No. 2 was marked.)

4 MR. DELLASEGA: This is Exhibit 2?

5 MS. WALLET: It is.

6 BY MS. WALLET:

7 Q Are you ready, sir?

8 A. Yes, ma'am.

9 Q I've handed you what we've marked for identification as  
10 Deposition Exhibit 2. Your name appears on the second  
11 page of that document.

12 Have you had a chance to look at it?

13 A. I glanced over it, yes.

14 Q Do you recall having received this document in or around  
15 March of 1991?

16 A. No, ma'am.

17 Q Do you have any reason to believe that you did not  
18 receive it at that time?

19 A. No, ma'am.

20 MR. ADAMS: Correction. 1998.

21 MS. BLANCHARD: You said '91.

22 MS. WALLET: Okay. Well, I obviously said  
23 something other than '98. Let's ask that question  
24 again.

25 BY MS. WALLET:

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1 Q Do you have any reason to believe that you didn't  
2 receive this document in or about March of 1998?

3 A. No reason one way or the other.

4 Q Do you have any recollection of the seniority and  
5 promotion issue, now that you've looked at the document  
6 marked Deposition 2?

7 A. No, ma'am.

8 Q Have you made any changes in the use of seniority for  
9 promotional purposes within the Probation Office since  
10 you became president judge?

11 A. I'm not aware of any seniority issues. What was the  
12 rest of your question?

13 Q My question, sir, was: Did you make any changes to the  
14 use of seniority when you became president judge?

15 A. Well, I don't know what use was made of seniority to  
16 begin with, ma'am, but seniority has never been high on  
17 my books.

18 Q Okay. Is that a no, you didn't make any changes?

19 MR. ADAMS: Objection, asked and answered.

20 MS. WALLET: Well, I would agree it's been asked.

21 THE WITNESS: I didn't change anything, if that's  
22 your question.

23 BY MS. WALLET:

24 Q That's my question, sir.

25 I'd like to show you what has previously been



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1 marked as Sheely Deposition No. 2, that being an April  
2 25, 1997, memorandum from Barbara Varner to Dan  
3 Hartnett. Would you take a minute to look at that, sir,  
4 and tell me whether you had a copy of that in or about  
5 March of 1998?

6 A. I do not recollect seeing this before.

7 Q Before today? Or before --

8 A. Ever. Ever, before ever. Before this moment, ma'am.

9 MS. WALLET: Okay. Let's mark as Deposition 3 a  
10 one-page document.

11 (Hoffer Deposition Exhibit No. 3 was marked.)

12 BY MS. WALLET:

13 Q Sir, is that your signature in the middle of the page  
14 marked Deposition 3?

15 A. Yes, ma'am.

16 Q Across from the word department head?

17 A. Yes, ma'am.

18 Q And you dated that for 3/13/98?

19 A. I did.

20 Q This personnel action form, is that prepared by you or  
21 by someone else?

22 A. Someone else.

23 Q Do you know who prepared this particular form?

24 A. No, ma'am.

25 Q I note that Dan Hartnett signed as personnel officer on

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1 the 24th of February, a couple week before you signed  
2 it.

3 Was this action a result of your initiation and  
4 your meeting with Mr. Ward? Or had Mr. Hartnett  
5 recommended this action to you?

6 A. What action? Is this the demotion?

7 Q Yes, it is.

8 A. Hartnett didn't recommend anything to me except perhaps  
9 to fire Graham.

10 Q Did he recommend that he be fired?

11 A. I don't know. It's a possibility, I don't -- I don't  
12 have any recollection of that, ma'am.

13 Q Did you consult with anyone before you made the decision  
14 to transfer and demote Mr. Graham?

15 A. About my decision?

16 Q Yes, sir.

17 A. No, ma'am. Obviously, I consulted with --

18 Q John Ward?

19 A. -- John Ward. But I had made my decision by that time.

20 Q It was your decision and your decision alone?

21 A. Yes, ma'am.

22 Q When did you learn that there was, for lack of a better  
23 word, some tension between Barbara Varner and Barbara  
24 Graham?

25 A. I suppose the beginning of '98 sometime.

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- 1 Q What did you learn, sir?
- 2 A. Well, aside from what I might have just heard in the
- 3 courthouse scuttlebutt, I think I saw a note from
- 4 Ms. Varner to Dan Hartnett, the personnel director,
- 5 complaining about Ms. Graham.
- 6 Q And did you receive that from Mr. Hartnett?
- 7 A. As far as I know, everything came from Hartnett. He
- 8 copied me with various things.
- 9 Q All right.
- 10 A. That is, from Ms. Varner.
- 11 Q Yes, sir.
- 12 A. Ms. Graham's notes came directly.
- 13 Q Okay. When you learned that Ms. Varner had made
- 14 complaints about Barbara Graham, what, if anything, did
- 15 you do?
- 16 A. Nothing.
- 17 Q Did you talk to Ms. Varner about her complaints?
- 18 A. She did not ask to see me.
- 19 Q Did you speak to Ms. Varner about her complaints?
- 20 A. No, ma'am.
- 21 Q Did you speak to Barbara Graham about the issue?
- 22 A. I did.
- 23 Q And when did you do that, sir?
- 24 A. I suppose it would have been sometime between the day
- 25 that I demoted Gary until I finally had a meeting with

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1 Ms. Varner in my office beginning of June, I believe it  
2 was.

3 Q And it was Barbara Graham who initiated the conversation  
4 with you? Is that correct?

5 A. I can't say that. She wanted to see me to intercede on  
6 her husband's behalf about the demotion action that I  
7 took, and tried to see me many times on that.

8 Q Did you see her on that issue?

9 A. On the demotion issue?

10 Q Yes, sir.

11 A. Yes.

12 Q Tell me what you remember about that meeting.

13 A. Well, they would have been short, ma'am.

14 Q Was it just you and she?

15 A. To my recollection, yeah. They would have been short  
16 and to the effect that I did what I did and I'm not  
17 changing anything, the demotion stands. And she wanted  
18 to tell me her side of the story and so forth and so on.  
19 I didn't listen to too much of that.

20 Q Do you think that the subject of the relationship  
21 between Barbara Graham and Barbara Varner came up at  
22 that same meeting or some later meeting?

23 A. Would you give me that again?

24 Q Sure. Barbara Graham comes to you and wants to talk to  
25 you about her husband's transfer, and you give her short

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1 shrift and that's over. Or were there other subjects at  
2 that meeting?

3 A. Well, it wasn't just one meeting, ma'am. She tried to  
4 see me several times about this. She wouldn't give up  
5 on it.

6 Q So she tried to see you several times. Did she succeed  
7 in seeing you more than one time?

8 A. Yes, ma'am.

9 Q Okay. So the first time was she talks about the  
10 demotion, you give her short shrift. Was that the end  
11 of that meeting?

12 A. I suppose something along those lines.

13 Q Did she bring up Barbara Varner at that meeting?

14 A. Only in the sense that she wanted me to hear Gary  
15 Graham's side of the story through her, I suppose.

16 Q Did you listen to that?

17 A. No, ma'am.

18 Q So she came to your office again another time?

19 A. Um-hum.

20 Q To discuss Barbara Varner?

21 A. Well, that would have been later.

22 Q Okay. Later meaning before you met with Ms. Varner?

23 A. Yes, ma'am. Yeah.

24 Q And what did she discuss with you on that occasion?

25 A. I don't remember the specifics, but you didn't have to

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1 be a genius to see that there was extreme antipathy  
2 between these two women, and that was what it was all  
3 about. And Barbara Graham mainly wanted to tell me her  
4 side of the story about various incidents.

5 Q Did you personally observe any relationship between  
6 Barbara Varner and Barbara Graham?

7 A. Relationship?

8 Q Did you ever observe the two of them in the same place?

9 A. No.

10 Q You knew about the, what you've described as antipathy  
11 between the two of them because of what people told you?

12 A. Ma'am, I knew about this lawsuit of Ms. Varner's going  
13 on. You have the demotion. These people aren't  
14 friends.

15 Q Okay. Did you place some restrictions on Ms. Varner  
16 with regard to where she could go within the courthouse?

17 A. No.

18 Q Did you call Joe Osenkarski to your courtroom or your  
19 chambers and instruct him to tell Ms. Varner that she  
20 had some restrictions on where she could go?

21 A. I don't recollect, but I may have said to Joe please ask  
22 Ms. Varner to stay out of the stenographers' room till  
23 we get that taken care of, till we get our renovations  
24 taken care of.

25 Q And you thought it was limited to the stenographers'

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1 room?

2 A. I don't understand your question, ma'am.

3 Q To the best of your recollection, what did you tell

4 Mr. Osenkowski to tell Ms. Varner?

5 A. Well, I think you have to understand the situation at

6 the time. Are you interested in that or not?

7 Q Sure.

8 A. At the particular time the old jurors' lounge on the  
9 fourth floor of the courthouse used by the lawyers had  
10 been used by a judge. The judge had moved out and we  
11 were renovating that space for the court stenographers  
12 since we had recently lost their space in the old  
13 section of the courthouse. So the stenographers all had  
14 to be moved into what was then occupied by Juvenile  
15 Probation and perhaps some Adult Probation in there,  
16 too. Ms. Varner -- excuse me -- Ms. Graham was in this  
17 temporary quarters with everyone else.

18 Now, having that understanding I'm ready for your  
19 question.

20 Q Okay. And these quarters where the stenographers were,  
21 is that on the third floor east wing of the courthouse?

22 A. They were on the third floor at that time, yes,  
23 temporarily.

24 Q You told Mr. Osenkowski to relay something to  
25 Ms. Varner?

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1 A. I may have said something to Joe routinely.

2 Q Well, what was routine about that?

3 A. Well, I may have asked him to have Ms. Varner, whose  
4 office was not in this section, anyway, to stay out of  
5 there unless we have some exchange between she and  
6 Mrs. Graham. I thought it was routine.

7 Q Did you ever restrict any of your other probation  
8 officers from entering any part of the courthouse?

9 A. I have not restricted any probation officer at any time  
10 other than Gary Graham, whose card we took away.

11 Q So you didn't consider this a restriction on Ms. Varner?

12 A. I did not restrict her movements, ma'am.

13 Q Okay. You told Mr. Osenkarski that she should stay away  
14 from the stenographers' area?

15 A. Please stay away from the room where Barbara Graham is  
16 working.

17 Q Okay. To the best of your knowledge, did Mr. Osenkarski  
18 carry out your instructions?

19 A. Well, I suspect he did, because I got a note from  
20 Mrs. Varner that day or the very next day: Put it all  
21 in writing. That's what prompted me to have her up to  
22 my office.

23 Q Okay.

24 A. I knew we had a problem.

25 MS. WALLET: Well, let me mark now as Deposition



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1 Exhibit 4 a one-page document.

2 (Hoffer Deposition Exhibit No. 4 was marked.)

3 BY MS. WALLET:

4 Q Tell me, Judge, when you're ready to answer questions  
5 about this document.

6 A. I am.

7 Q Did you receive what has been marked as Deposition  
8 Exhibit 4 in or around June 1, 1998?

9 A. I think I did.

10 Q Now, Ms. Varner says that Joe Osenkarski told her that  
11 she was not to conduct business in the Probation offices  
12 located on the third floor east wing of the courthouse.

13 Do you have any reason to believe that that's not  
14 what Mr. Osenkarski told Ms. Varner?

15 A. I have no idea what he told her, ma'am, but if I told  
16 him, I would have made it a request.

17 Q Now, Ms. Varner says she wanted it in writing.

18 A. Um-hum.

19 Q And Mr. Osenkarski has already testified that he didn't  
20 respond to this.

21 Did you respond in some fashion to Deposition 4?

22 A. I had Ms. Varner in my office the very next day, ma'am.

23 Q And you made notes of that meeting?

24 A. I did.

25 MS. WALLET: We'll mark as Deposition Exhibit 5 a

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1 package of documents.

2 (Hoffer Deposition Exhibit No. 5 was marked.)

3 THE WITNESS: I wish this was a little clearer.

4 BY MS. WALLET:

5 Q Whose fault is that, your Honor?

6 A. Pardon me?

7 Q I said, whose fault is that? Clearer meaning your  
8 handwriting or clearer meaning the copies?

9 A. No, the copy.

10 MS. WILLIAMS: Do you have a better copy?

11 MS. WALLET: I have the one that you gave me and I  
12 don't have any --

13 MS. WILLIAMS: If it's clearer, maybe he could  
14 refer to that.

15 THE WITNESS: I have my original note in the  
16 office.

17 BY MS. WALLET:

18 Q I'll show you one that was provided to me. We'll see  
19 if that's a little better.

20 A. Not much better.

21 MS. WILLIAMS: Is that one a little better?

22 THE WITNESS: No.

23 MS. WALLET: It's about the same.

24 BY MS. WALLET:

25 Q Is what we've marked as deposition Exhibit 5 your

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1 notes from the meeting with Ms. Varner?

2 A. It is.

3 Q And it consists of three pages?

4 A. Yes.

5 Q I think we can read the first page pretty well. It's  
6 the second and third pages we might need some  
7 interpretation on.

8 MS. WILLIAMS: Do you want us to get the original  
9 from the judge's chamber?

10 MR. THOMAS: Let's see if he can read it. It's not  
11 that bad.

12 BY MS. WALLET:

13 Q Do you think you can read this, sir?

14 A. I'll try.

15 Q Okay. Beginning at page 2, would you read that, please?

16 A. Dash, "explained that I wanted to eliminate as much  
17 contact with Barbara Graham as possible," dash, "I'd  
18 move Barbara Graham if possible but can't." Dash,  
19 "asked Barbara Varner to voluntarily stay out of Barbara  
20 Graham's office and have officers she needs to talk to  
21 come to her office." Dash, "she," Barbara Varner,  
22 "questioned why." Dash, "she agreed with me that  
23 regardless of anything else, Barbara Graham is an  
24 innocent victim."

25 Dash, "explained to Barbara Varner that I am not

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1 ordering her where or where not to go." Dash, "wanted  
2 Barbara Varner to volunteer to do it to ease tensions.  
3 Barbara Varner still questions why."

4 "My position to Barbara Varner," colon, "I'm not  
5 ordering her to do anything but if she still insists, I  
6 will move any officer Barbara Varner has to see out of  
7 that office," where Barbara Graham was, "until Barbara  
8 Graham is relocated," period.

9 Q Do you believe those notes accurately reflect what you  
10 told Ms. Varner on June 2nd, 1998?

11 A. Absolutely.

12 Q Do you have any other recollection of that meeting other  
13 than what is contained in your notes?

14 A. Well, unless you refresh me with something, ma'am, these  
15 were the main points that I wanted to make a note of.

16 Q Did you tell Ms. Varner that either Mr. Osenkarski had  
17 gotten it wrong or that she had gotten it wrong about  
18 not being able to go to the third floor east wing at  
19 all?

20 A. I don't remember, ma'am. And that wouldn't have been  
21 important in my mind, either way, anyway.

22 Q Why not?

23 A. This was coming from me, a talk with Ms. Varner  
24 directly.

25 Q Did you believe that you had straightened this out as a

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1 result of this meeting with Ms. Varner?

2 A. Straightened what out?

3 Q Where Ms. Varner could go and not go.

4 A. I didn't --

5 MR. THOMAS: Objection to form.

6 THE WITNESS: I didn't know.

7 MR. THOMAS: Object to form. He can answer.

8 THE WITNESS: I didn't know if it was straightened  
9 out or not, ma'am.

10 BY MS. WALLET:

11 Q Okay. Did you intend to change the instructions that  
12 Mr. Osenkarski had given Ms. Varner?

13 A. What instructions?

14 Q That she not go anywhere on the third floor east wing of  
15 the courthouse?

16 A. I don't know what instructions he gave her, ma'am. I  
17 don't have any recollection of discussing any  
18 instructions from Osenkarski. Whatever they were, were  
19 irrelevant. This is myself and Ms. Varner talking  
20 directly about this.

21 Q Well, let me ask you this, Judge Hoffer. Did she agree  
22 as a result of this meeting to what you had asked her to  
23 do?

24 A. My impression was that she did not.

25 Q Did you give a her an order?

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- 1 A. What order?
- 2 Q An order not to go to the office where Barbara Graham
- 3 was.
- 4 A. Absolutely not, ma'am.
- 5 Q So you asked her to do something, she didn't agree, and
- 6 that's --
- 7 A. I said I had the impression that she did not agree. She
- 8 never gave me a definitive answer.
- 9 Q Did you believe as a result of this meeting that she
- 10 would stay out of the stenographers' section?
- 11 A. I didn't know, ma'am. That remained to be seen whether
- 12 she would voluntarily agree to do that or not.
- 13 Q Is it your position, sir, that she was never restricted
- 14 with regard to where she could go in the courthouse?
- 15 A. Absolutely no restrictions.
- 16 Q Did you place any similar restrictions on Barbara
- 17 Graham?
- 18 A. I haven't restricted anyone, ma'am.
- 19 Q Well, let me ask it a different way. You asked
- 20 Ms. Varner to stay out of the area where Barbara Graham
- 21 was. Did you ask Ms. Graham to stay out of the area
- 22 where Barbara Varner was?
- 23 A. I told Ms. Graham to stay away from Ms. Varner, period.
- 24 Q And when did you tell her that?
- 25 A. Oh, that was -- I don't recollect.

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1 Q Well, was it before or after you had the meeting with  
2 Ms. Varner?

3 A. It would have been around that time, but I don't know  
4 when.

5 Q Did Ms. Varner tell you that she might have some  
6 legitimate business reasons for going to the third floor  
7 east wing of the courthouse?

8 A. She did.

9 Q Did you believe that her reasons were legitimate?

10 A. My recollection was that she wanted -- she had to talk  
11 to Debbie Green, a fellow probation officer who was over  
12 there, and she had to talk about cases. That's what she  
13 told me.

14 Q Did you doubt that?

15 A. No, ma'am. But it's in my notes, I said if you have to  
16 talk about cases with Debbie Green I'll move Ms. Green  
17 over to the new office.

18 Q Did you think that it might be embarrassing for  
19 Ms. Varner to be restricted or to have a part even that  
20 would be off limits to her?

21 MR. ADAMS: Objection.

22 MS. WILLIAMS: Objection.

23 THE WITNESS: I did not restrict Ms. Varner's  
24 movements, ma'am.

25 BY MS. WALLET:

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1 Q Did you think it would be embarrassing to her if she  
2 was to honor your suggestion that she not go to the  
3 stenographers' area?

4 MR. ADAMS: A continuing objection. It requires  
5 the judge to speculate as to the feelings of Ms. Varner.

6 BY MS. WALLET:

7 Q You may answer.

8 A. I can't read her mind, ma'am.

9 Q Were there other probation officers other than Ms. Green  
10 in that same area?

11 A. To my recollection, yes.

12 Q Who else was there?

13 A. I don't recollect. Ms. Green was the only one  
14 Ms. Varner told me she had to talk to.

15 Q Would you agree, sir, there were a handful, at least --

16 A. A what?

17 Q A handful, several, more than two, probation officers  
18 located in that area at that time?

19 A. I think there were both perhaps Juvenile and Adult. I  
20 don't recollect what the line-up was in there. But I  
21 know we had stenographers in there, so that would have  
22 cramped things a little bit.

23 Q Were the stenographers in exactly the same area? I  
24 mean, is it one big room?

25 A. It was one large room with various smaller rooms cut off



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1 and partitioned. I don't remember the line-up anymore.

2 Q Was Ms. Varner the only probation officer who didn't  
3 have her office there?

4 A. Could you ask me that again, ma'am?

5 Q Well, we know that a number of probation officers were  
6 on the third floor east wing, and Ms. Varner wasn't.  
7 Were there others, other than Ms. Varner, who did not  
8 have their offices on the third floor east wing?

9 A. In Juvenile Probation?

10 Q Yes, sir.

11 A. Oh, yes. Back in the main part of the third floor in  
12 the old section, where they all started.

13 Q Do you recall whether it was about equally divided or  
14 more in one area than the other?

15 A. I can't remember the setup at that time. I know a lot  
16 of the Adults went in there but I don't remember when  
17 that was anymore. Maybe that was later.

18 MS. WALLET: Just for the record, your Honor, would  
19 you look at what we'll mark as Deposition Exhibit 6?

20 (Hoffer Deposition Exhibit No. 6 was marked.)

21 BY MS. WALLET:

22 Q Tell me when you're ready, sir.

23 A. I'm ready.

24 Q Do you remember receiving this memorandum in or around  
25 February 11, 1998?

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1 A. I thought this was a memo I referred to earlier in my  
2 testimony.

3 Q Do you believe you received this memo along with the  
4 attachment in or around February 11, 1998?

5 A. I have no reason not to believe that I got it about that  
6 time.

7 MS. WALLET: Let's mark as Deposition 7 another  
8 one-page memo.

9 (Hoffer Deposition Exhibit No. 7 was marked.).

10 BY MS. WALLET:

11 Q Are you ready?

12 A. Yes, ma'am.

13 Q Okay. Do you recall receiving Deposition 7 in or about  
14 March of 1998?

15 A. As we sit here now, no, I don't have any independent  
16 recollection of receiving it, although some of it does  
17 look familiar.

18 Q This is not directed at you or addressed to you, but do  
19 you believe you received it from Mr. Hartnett?

20 A. I may have, I just don't recollect. Some of it looks  
21 familiar.

22 Q Did meet with Barbara Varner on March the 4th of 1998?

23 A. I have no recollection of meeting with her on March 4,  
24 ma'am.

25 MS. WALLET: Well, let's mark as Deposition 8 some

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1 additional handwritten notes that were provided by your  
2 counsel.

3 (Hoffer Deposition Exhibit No. 8 was marked.)

4 BY MS. WALLET:

5 Q Are these your notes, sir?

6 A. They are.

7 Q I can't really tell what the date is.

8 A. 3-4-98.

9 Q Okay. Do you recall having a meeting with Barbara  
10 Varner on --

11 A. Now that you've showed me this note, yes.

12 Q Okay. And do you believe that you met with Ms. Varner  
13 on the 4th because you had received the March 3rd, 1998,  
14 memo? Which we've marked as Deposition 7.

15 A. I don't know if it was a response to that, but I did  
16 know I wanted to find out how the supervision with Sam  
17 Miller was going.

18 Q And did you call Ms. Varner to your chambers?

19 A. Probably, but I don't know.

20 Q Do you remember why you had the meeting that was  
21 documented 3/4/98?

22 A. To find out how the supervision with Sam Miller was  
23 going and any other complaints she had.

24 Q And for the record, would you just read what is  
25 contained on this document, Deposition 8, under the

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1 words Barb Varner?

2 A. "Supervision by Miller is going okay, but Graham's heavy  
3 hand is pervasive through the office through little  
4 things."

5 Q Does that reflect what Ms. Varner told you on March 4,  
6 1998?

7 A. It would have.

8 Q Do you remember what she told you?

9 A. Other than what I have in my notes, no, ma'am.

10 Q Did you take any action as a result of your meeting with  
11 Ms. Varner on the 4th of March, 1998?

12 A. Well, Gary Graham was demoted about 10 days later.

13 Q Did you do it as a result of your meeting with  
14 Ms. Varner?

15 A. No. Not solely, no.

16 Q Did you do anything to investigate any of the  
17 allegations that Ms. Varner had made in the attachment  
18 to Deposition 6 and Deposition 7?

19 A. No.

20 Q Did you instruct Mr. Osenkowski prior to your demoting  
21 Mr. Graham to take any action to monitor Mr. Graham's  
22 activities?

23 A. To monitor Graham's activities?

24 Q Yes.

25 A. After I demoted him?

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1 Q Before you demoted him.

2 A. No. I don't think before, no.

3 Q You agree that Mr. Osenkowski was responsible as  
4 Mr. Graham's supervisor at that time?

5 MR. ADAMS: Object. What do you mean by  
6 responsible?

7 MS. WALLET: Well, I'll ask a different question.

8 BY MS. WALLET:

9 Q There's no question, is there, sir, that  
10 Mr. Osenkowski was the direct supervisor of Mr. Graham  
11 until such time as you demoted him and sent him to the  
12 prison?

13 A. No question in my mind, ma'am.

14 Q Did you at any time tell Mr. Osenkowski to keep an eye  
15 on Mr. Graham, particularly with regard to the tension  
16 in the office with Ms. Varner?

17 A. I may have. I don't have any recollection, ma'am.

18 Q Did you believe that by sending Mr. Graham to the  
19 prison, that he would not have any contact with  
20 Ms. Varner that?

21 A. That's awfully broad, ma'am. I knew he wouldn't have  
22 any contact with Ms. Varner in the courthouse anymore.  
23 Outside of the courthouse, I can't say.

24 Q Did you at any time ever tell Mr. Graham to stay away  
25 from Ms. Varner?

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1 A. No.

2 Q Now, you learned, did you not, that there was a training  
3 session at which Mr. Graham and Ms. Varner were both in  
4 attendance?

5 A. In regard to the DUI school?

6 Q Yes, sir.

7 A. Yes, ma'am.

8 Q And how did you learn that Ms. Varner had once again  
9 complained about her interaction with Mr. Graham?

10 A. I think she wrote a note after the session was over.

11 Q And that came to your attention?

12 A. Yes, ma'am. I wrote her a note back.

13 MS. WALLET: Let's mark as Exhibit 9 a one-page  
14 letter from you to Ms. Varner.

15 (Hoffer Deposition Exhibit No. 9 was marked.)

16 BY MS. WALLET:

17 Q Can you identify for us Deposition 9?

18 A. My letter ma'am to Mr. Graham.

19 Q Why did you write that letter?

20 A. I wrote it in response to her note to John Ward.

21 Q Did you as a result of her note to you ever call  
22 Mr. Graham in, tell him to stay away from Ms. Varner?

23 A. As a result of what?

24 Q As a result of her complaint about having to be at the  
25 same place as Mr. Graham. Did you call Mr. Graham in

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1 and tell him to stay away from Ms. Varner?

2 A. I don't have any recollection whether I did or not.

3 This was a routine meeting, ma'am.

4 Q After February of 1999 did you ever give any  
5 instructions to Mr. Graham regarding his relationship  
6 with Ms. Varner?

7 A. After?

8 Q February of '99, the date of your letter.

9 A. Did I give him any what?

10 Q Instructions regarding his relationship with Ms. Varner.

11 A. No, ma'am .

12 MS. WALLET: Let's mark as Deposition 10 a one-page  
13 document.

14 (Hoffer Deposition Exhibit No. 10 was marked.)

15 BY MS. WALLET:

16 Q Sir, what we've marked as Deposition 10 was also  
17 provided by your counsel. Can you tell me what this  
18 note refers to?

19 A. That would have preceded what you gave me as Deposition  
20 No. 8, ma'am.

21 Q You agree there's no date on this?

22 A. No, but it would have been shortly before March 4, or  
23 3/4/98.

24 Q Okay. And Deposition 10 was simply a note to yourself  
25 to call Ms. Varner in?

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- 1 A. Um-hum.
- 2 Q And for the record, could you read me the part after
- 3 call Varner in with or without attorney?
- 4 A. Dash, "how are things going," question mark, question
- 5 mark, for me to ask her. I said "Judge Sheely took," or
- 6 I wanted to say to her "Judge Sheely took steps last
- 7 summer, has" the steps, "has it been resolved."
- 8 Q Do you recall whether you asked Ms. Varner has this been
- 9 resolved? When you met with her on the 4th.
- 10 A. Well, that would have been then her response: Graham's
- 11 heavy hand is still pervasive.
- 12 Q What's the 6269 reference, do you know what that is?
- 13 A. No. I don't have any idea what that is.
- 14 Q You don't think that has any significance at all to this
- 15 case?
- 16 A. I don't know. It might be an extension number of a
- 17 telephone. I have no idea what it is.
- 18 Q Now, in March of 2002 there was a bomb scare in the
- 19 building. Do you recall that?
- 20 A. Vaguely.
- 21 Q In fact, I think you had a couple, did you not?
- 22 A. I think so.
- 23 Q How did you learn that Ms. Varner had been left in the
- 24 building and was not evacuated as part of that bomb
- 25 scare?



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1 A. I think she wrote a letter to someone.

2 Q Do you think she wrote a letter to you?

3 A. I don't know if it was to me or to John Ward, personnel,  
4 what it was. I remember seeing something.

5 MS. WALLET: Well, we'll mark this as Deposition  
6 11.

7 (Hoffer Deposition Exhibit No. 11 was marked.)

8 THE WITNESS: Do you have a question?

9 BY MS. WALLET:

10 Q My question, sir, is: Did you receive this memo  
11 perhaps without the handwritten part, in or about March  
12 27, 2002?

13 A. I suspect I did.

14 Q Did you take -- well, let me ask you, this is not your  
15 handwriting at the bottom, correct?

16 A. That is correct, it is not.

17 Q And do you believe that the memo had no handwriting on  
18 it at the time you received it?

19 A. I don't remember.

20 Q Now, she says in March of 2002: As you know, in the  
21 past you have restricted me from that office.

22 Did you make any response to that memo to clarify  
23 that you never restricted her?

24 A. I never restricted her, ma'am. I didn't think I needed  
25 to respond to something like that.

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1 Q What did you do in response to this March 27, 2002,  
2 memo?

3 A. I think I got ahold of Osenkarski and said: What's  
4 going on, do we have a policy. I don't recollect, but I  
5 think I did get ahold of Osenkarski. I said: Take  
6 steps to see this doesn't happen again. Something along  
7 that line.

8 Q Okay. Do you know whether he did?

9 A. I think he did.

10 Q What do you think he did?

11 A. Oh, I think I saw a policy come out of there sometime  
12 after that.

13 Q Did you have a previous that policy?

14 A. As far as initialling it or something? If there was a  
15 policy, it was all right with me.

16 Q She suggests in her memo of March 27, 2002, that she try  
17 temporarily working in the east wing Probation Office.  
18 Apparently that was the suggestion of Ms. Miller.

19 Did you have any discussions with Ms. Miller about  
20 this?

21 A. I have no recollection of that.

22 Q Did you play any role in the subsequent move of  
23 Ms. Varner to the east wing Probation Office?

24 A. Oh, well, if she was moved I would have played some role  
25 in it, in okaying it.

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1 Q Do you know who suggested that she move?

2 A. No, ma'am.

3 Q Was it your suggestion that she move?

4 A. No, I don't remember.

5 MS. WALLET: Let's mark as Deposition 12 an April  
6 5, 2005, memo.

7 (Hoffer Deposition Exhibit No. 12 was marked.)

8 MS. WALLET: I've handed the witness what we've  
9 marked as Deposition 12.

10 BY MS. WALLET:

11 Q Specifically I want to call your attention to  
12 paragraph 5, maybe these where I got 2005. According to  
13 Ms. Miller's memo, an official request has been made to  
14 President Judge Hoffer to move Ms. Varner's office.

15 Does that refresh your recollection as to where  
16 this suggestion came from?

17 A. No, other than looking at the paper.

18 Q Don't have any recollection that someone from the county  
19 requested that you do this?

20 A. I don't have any recollection about the move much at  
21 all, ma'am.

22 Q Did you go to the east wing to take a look at the  
23 quarters before you approved Ms. Varner going there?

24 A. East wing? Who did she move in with? Or did she move  
25 in by herself? I'm trying to remember.

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1 Q Gail Schuhart?

2 A. Oh, well, she moved in with Ms. Schuhart. I guess I  
3 would have gone down, I think I went down to the office  
4 to see if it was big enough and to see if Ms. Schuhart  
5 could operate with somebody else in there.

6 Q Did you ever do that when someone else asked to move  
7 their office?

8 A. I may have. I don't recollect.

9 Q Is it your policy to check out the quarters before you  
10 approve a move?

11 A. My policy?

12 Q Practice, maybe.

13 A. You have to remember, ma'am, I was being sued at this  
14 point by Ms. Varner. Do you have a question?

15 Q Well, the question was: Do you normally do this, or was  
16 this unusual?

17 A. It is not unusual to find me in any office of any of the  
18 Probation offices, or any office in the courthouse, as  
19 far as that goes.

20 Q Did the fact that Ms. Varner had a lawsuit pending at  
21 that time cause you to act differently?

22 A. Differently only in the respect that there was not going  
23 to be any further action on my part, if I could help it,  
24 to be part of that lawsuit anymore.

25 Q Ultimately you did approve this move?

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1 A. If she moved, I guess I would have approved it.

2 Q When you became president judge did you think that Judge

3 Sheely had taken care of these incidents between

4 Ms. Varner and Mr. Graham?

5 A. I had no idea, ma'am.

6 MR. ADAMS: Objection to the form.

7 BY MS. WALLET:

8 Q What did Judge Sheely tell you about what he had done

9 and why he had done it?

10 A. When he told me, I don't remember. That would have been

11 late, late in his term, I suspect, or perhaps about the

12 time I took over.

13 You're asking me -- why don't you give me that in

14 pieces, ma'am.

15 Q Okay. What did Judge Sheely tell you that he had done?

16 A. I think he gave Gary Graham a three-day suspension.

17 Q Did he tell you that he had suspended him without pay?

18 A. I don't remember.

19 Q Did Judge Sheely tell you that he thought there was an

20 affair between Ms. Varner and Mr. Graham?

21 A. I know he told me Gary confessed to an affair in front

22 of him with his wife. I remember him telling me that.

23 Q Did you have any evidence, sir, that there was an affair

24 or a sexual relationship between Gary Graham and Barbara

25 Varner?

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- 1 A. Any independent evidence?
- 2 Q Yes, sir.
- 3 A. I didn't even know the allegations were going on until I
- 4 took over as PJ, and I have no evidence.
- 5 Q Did Judge Sheely tell you that he had taken care of
- 6 this?
- 7 A. Are you asking me if he said those words?
- 8 Q Or something to that effect.
- 9 A. I don't remember his exact words, but I know that he
- 10 said a three-day suspension for Gary Graham.
- 11 Q After you learned that the EEOC charge was pending, did
- 12 you take any action to try to resolve the matter?
- 13 A. In what way?
- 14 Q In any way.
- 15 A. Well, I didn't have Ms. Varner and Mr. Graham into the
- 16 office to sit down and try to mediate something, if
- 17 that's what you're saying, absolutely not. There was a
- 18 lawsuit filed, ma'am. It's going to take its course.
- 19 Q Did you have any knowledge at any time, sir, that
- 20 Mr. Osenkowski made reference to something called the
- 21 cunt club?
- 22 A. If that was in the report of Deluce, yes.
- 23 Q And if not?
- 24 A. Well, I'm trying to recall now, and I don't have any
- 25 recollection. Perhaps if you showed me something. But

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1           that's my answer.

2       Q       Is there, sir, at times, disputes between the county --

3                   MS. WILLIAMS: Could you repeat that?

4       BY MS. WALLET:

5       Q       Is there at times disputes between the county and your  
6                   office as to how probation officers should be treated  
7                   with regard to terms and conditions of employment?

8       A.       I still didn't hear that. Is there a dispute between  
9                   myself and the county about what?

10      Q       About terms and conditions as they apply to probation  
11               officers.

12               MS. WILLIAMS: Did you hear the question, Judge?

13               THE WITNESS: Yeah.

14               There's no dispute. There might be arguments, but  
15               I do the hiring and firing, ma'am. I'm in charge of the  
16               Probation Office.

17      BY MS. WALLET:

18      Q       Is there a dispute currently over whether or not a  
19               probation officer is permitted to take time off with  
20               pay?

21      A.       Oh, one of the boys had been in to see me, yeah, and I  
22               guess he's fighting with Human Services.

23      Q       Someone made a request to you for some vacation time  
24               which you approved, correct?

25      A.       Verbally, yeah. I haven't done anything in writing. I

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1           may have, too. I don't know.

2       Q     And that individual was told by the county human  
3           resources department that he couldn't take the time off?  
4           Correct?

5       A.    That's what he told me. I don't have any dealings with  
6           the county directly on this myself. You're referring to  
7           Greg Richardson, I believe. Or someone else?

8       Q     Who will make the determination about that case, you or  
9           the county?

10      A.    About what?

11      Q     About that case, the Richardson case.

12      A.    To give you the short answer, I don't know until I look  
13           at it a little deeper. Vacation policy may be a little  
14           bit different than the question of me hiring and firing,  
15           which is basic, for example, I don't set the hours that  
16           the courthouse is open, the commissioners do. And the  
17           probation officers work under those hours by and large  
18           unless they're working independently, which some of them  
19           do. It's the nature of the job. So that's the best I  
20           can tell you.

21      Q     Who controls the budget for the payment of your  
22           probation officers?

23      A.    The county writes the checks, ma'am.

24      Q     Who controls the budget for your staff?

25           MR. THOMAS: Are you asking him who writes the



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1 paycheck?

2 MS. WALLET: Yes, sir.

3 THE WITNESS: We prepare a budget, the court  
4 administrator and myself. We try to get it approved by  
5 the county commissioners.

6 What's your question, ma'am?

7 MS. WALLET: Maybe this is a good spot. We've had  
8 a request to take a break. Let's take a break for 10  
9 minutes?

10 MR. ADAMS: How about five?

11 (Recess taken from 3:42 until 3:50 p.m.)

12 BY MS. WALLET:

13 Q Judge Hoffer, is it accurate to say that it is the  
14 county that controls the budget for the probation  
15 officers?

16 A. The county sets the budget, ma'am. Probation is one of  
17 the departments that they said a budget for. We prepare  
18 a Probation budget and we go to them with our request.

19 Q What happens if they turn you down?

20 A. There are five votes, ma'am. If I have the votes, I get  
21 it. If I don't have the votes, I don't get them.

22 Q Do you agree, sir, that you do not have access to any  
23 independent sources of funding except through the county  
24 for the Probation Office?

25 A. I have a very small fee, supervision fee.

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1 Q And what is that, sir?

2 A. Money received from supervision fees.

3 Q So that when a convicted individual is supervised or --

4 A. I think that's the way it goes.

5 Q Okay. Do you have any access to any other monies  
6 besides grant monies to fund the Probation Office?

7 A. No, ma'am.

8 Q When you learned what happened during the bomb scare,  
9 did you give any consideration to disciplining  
10 Mr. Osenkarski?

11 A. No, ma'am.

12 Q Why not?

13 A. I didn't see that anybody had done anything wrong other  
14 than through an honest error.

15 Q Who did you talk to before you reached that conclusion?  
16 I didn't talk to anybody.

17 MS. WALLET: That's all the questions I have.

18 MR. THOMAS: Can we change places so the judge can  
19 hear?

20 MS. WALLET: Sure.

21 BY MR. DELLASEGA:

22 Q Good afternoon, Judge. I'm Paul Dellasega and I  
23 represent the county. I'd like to clarify a couple of  
24 your answers, if I could.

25 A. Could you keep your voice up?

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1 Q Yes, sir. I'd like to clarify a couple of your answers,  
2 if we can, Judge.

3 Other than this case, since you've been the  
4 employer, have you had to deal with any other  
5 allegations of adultery between your employees?

6 A. No.

7 Q Do you approve of adultery between your employees?

8 A. Between employees?

9 Q Correct.

10 A. No.

11 Q In your experience, Judge, have you dealt with other  
12 cases or been aware of other adulterous situations that  
13 have resulted in hard feelings?

14 A. I suppose so.

15 Q In this particular case, when Judge Sheely told you  
16 there was an allegation of adultery between Ms. Varner  
17 and Mr. Graham and told you that Mr. Graham had  
18 confessed in front of his wife, what effect did you give  
19 the fact Mr. Graham had confessed in front of his wife?

20 A. I don't know that I gave it any effect.

21 Q In deciding what to do about the Graham and Varner  
22 situation, did the fact that Mr. Graham had confessed to  
23 adultery in front of his wife influence your ultimate  
24 decision?

25 A. I don't -- not per se, I don't think so, no.

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1 Q Would you have treated Mr. Graham differently if you  
2 felt there had not been adultery and he had simply been  
3 a pure sexual harasser?

4 MS. WALLET: Objection to the form of the question.  
5 I don't think that this witness ever admitted that he  
6 considered this to have been an adulterous relationship.

7 THE WITNESS: It is incorrect for a supervisor to  
8 have any kind of affair with a person that he or she is  
9 supervising. Absolutely wrong, consensual or otherwise.  
10 So what's your question?

11 BY MR. DELLASEGA:

12 Q The reason that you just articulated the me, that it  
13 is incorrect for a supervisor to engage in adultery with  
14 an employee --

15 A. Or any kind of relationship, sexual.

16 Q Is that the reason why you demoted Mr. Graham in  
17 addition to his management deficiencies?

18 A. That was part of it.

19 Q What was the --

20 A. The relationship, yes.

21 Q What was the other part of it, judge?

22 A. I had lost my confidence in his ability to be a  
23 supervisor.

24 Q And when you say that, Judge, are you referring to his  
25 management skills?

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1 A. Absolutely.

2 Q Okay. And did you learn about his management  
3 deficiencies through these interviews you conducted that  
4 are outlined in Exhibit 1?

5 A. Through the report and through all the people that I  
6 talked to, yes.

7 Q Okay. And when you considered what to do about this  
8 case, Judge, did you rely on Mr. Deluce's opinions or  
9 upon your own conclusions?

10 A. Well, I drew upon Deluce's report, yes, verified to some  
11 extent by my interviews with the various people.

12 Q Did you use the Deluce report for the factual  
13 information it contained or for Mr. Deluce's opinions  
14 expressed in the report?

15 MS. WALLET: Objection. I'm going to note my  
16 objection for the record. I don't think you can lead  
17 this witness. There is no reason why you can conduct  
18 this cross-examination. He is simply a witness to be  
19 deposed.

20 MR. DELLASEGA: It's a discovery deposition. I can  
21 ask him any question I want to ascertain information.  
22 Whether the question is admissible at trial may depend  
23 on the form of the question, but there's no rule against  
24 leading your own witness, if indeed, he is my own  
25 witness. And that is a contention in this case.

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1 MS. WALLET: And I'm objecting to the form of the  
2 question.

3 MR. ADAMS: I need to also add that the judge is  
4 not only a witness but he's actually a party in the  
5 litigation, which probably gives Mr. Dellasega a little  
6 bit more leeway to ask any kind of question, the mere  
7 fact that he's a party.

8 MS. WILLIAMS: He's a representative of a party.

9 MR. ADAMS: Thank you.

10 THE WITNESS: Where are we?

11 BY MR. DELLASEGA:

12 Q You still have to answer my question, Judge.

13 THE WITNESS: Yes?

14 MS. WILLIAMS: Yes. Could you repeat the question,  
15 Mr. Dellasega.

16 BY MR. DELLASEGA:

17 Q Judge, when you decided what to do about this case did  
18 you reach your own conclusions and act only on those  
19 conclusions, or did you act also on the opinion of  
20 others?

21 A. I acted on the factual opinion of others in making up my  
22 mind what the facts were. Then I acted.

23 Q You referred in one of the exhibits to Barbara Graham as  
24 an innocent victim?

25 A. That was in my meeting with Mrs. Varner.

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- 1 Q Why did you consider Barbara Graham an innocent victim?
- 2 A. No matter what version is true, of Mrs. Varner's
- 3 statement and Gary Graham's statement, Mrs. Graham is in
- 4 the middle on it. She loses any way it comes out.
- 5 Mrs. Varner agreed with me on that.
- 6 Q When Mrs. Graham attempted to talk to you, do you
- 7 recall, did she appear distraught?
- 8 A. She talked to me several times and usually she was
- 9 distraught, yes. Mrs. Graham, you said?
- 10 Q Mrs. Graham, yes.
- 11 A. Yes.
- 12 Q Did Mrs. Graham indicate to you that she felt
- 13 Mrs. Varner was a home wrecker?
- 14 A. I don't remember those words. She mostly wanted me to
- 15 hear the other side of it.
- 16 Q Did she indicate any words that were similar to that?
- 17 A. I have no recollection of anything like that.
- 18 Q In your note you indicate Mrs. Varner did not oppose
- 19 your statement that Mrs. Graham was an innocent victim?
- 20 A. Yes. That's what I made a note of in my visit with her.
- 21 Q As I understand, Judge, there is a salary board in this
- 22 county?
- 23 A. There is.
- 24 Q And when you were referring to votes, were you referring
- 25 to the votes of the salary board?

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- 1 A. I suppose the salary board -- yeah. Now that you  
2 refreshed me, it is the salary board that we have the  
3 votes. I don't have a vote on the budget per se.
- 4 Q As I understand, the salary board is the three  
5 commissioners and the controller?
- 6 A. Three commissioners, controller, and the department  
7 head.
- 8 Q And the department head would be the row officer  
9 involved; is that right?
- 10 A. Or the judge with judicial matters.
- 11 Q Okay. So in the situation where a department head feels  
12 there's the need for an additional position in his  
13 department, that would have to be approved by the salary  
14 board; is that correct?
- 15 A. Yes.
- 16 Q All right. And in that event, the department head sits  
17 as the fifth vote?
- 18 A. Yes.
- 19 Q And when you feel the need for an additional court  
20 position, you sit as the fifth vote on the salary board  
21 to determine whether or not that court position should  
22 be created?
- 23 A. That's my recollection. Yes.
- 24 Q And when the salary for that position is set, you also  
25 sit as the fifth vote; is that correct?



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1 A. On the pay per se? I guess, but I'm a little more vague  
2 on that.

3 Q If the salary board consists of five people and there  
4 are three commissioners, the commissioners would always  
5 have the majority vote on the salary board?

6 A. Is that a question?

7 Q Yes. Three is a majority of five?

8 A. Obviously, they would.

9 Q All right. Other than the commissioners' ability to  
10 control the creation of jobs and the salaries set for  
11 the jobs, do you control all the other terms and  
12 conditions of employment for your court employees?

13 A. I think so, yes.

14 Q As a consequence of the allegation of adultery,  
15 Mr. Graham has received negative consequences?

16 A. Negative what?

17 Q Has received negative consequences in the form of a  
18 demotion. Can you identify any negative consequence  
19 Mrs. Varner has received?

20 A. She's denied everything. I don't know of any negative  
21 consequence towards her.

22 Q You have imposed no negative consequence?

23 A. No. On her, no.

24 Q Even though she is accused of adultery, you have  
25 attempted to accommodate her complaints?

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1 A. She has denied everything.

2 Q I understand that, Judge. Having denied the  
3 allegations, you have still -- let me rephrase it.

4 In your own mind have you reached a conclusion as  
5 to whether or not adultery took place?

6 A. I have no -- I don't have to make that decision, sir,  
7 and I have not made it.

8 Q All right.

9 A. That will play out in a court of law.

10 Q All right. Having left that as an open issue,  
11 Mr. Graham has been demoted but nothing has happened to  
12 Mrs. Varner?

13 A. I think I just said that.

14 Q Right. And in fact, you have attempted, even though  
15 it's an open issue, to accommodate Mrs. Varner with the  
16 complaints that she has expressed over the years; is  
17 that right?

18 A. Well, yes, I think so. We've promoted her.

19 Q Judge, if you have two probation officers and one is  
20 slightly senior to the other, and a junior probation  
21 officer is the better qualified employee, which will you  
22 consider for promotion?

23 A. Quality. Qualifications, absolutely.

24 Q Within the Cumberland County bench, Judge, does  
25 Mrs. Graham have a reputation for truthfulness?

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1 MS. WILLIAMS: Did you hear the question, Judge?

2 THE WITNESS: Yeah, I heard the question. You're  
3 asking me if I know Mrs. Graham's reputation?

4 BY MR. DELLASEGA:

5 Q For truthfulness.

6 A. For truthfulness. While I'm a judge I don't think  
7 you're asking a reputation question in a proper fashion,  
8 but you're asking it, sir, do I know her reputation.

9 Q For truthfulness.

10 A. As far as the cases that she presents in front of me, I  
11 think she presents them in a truthful manner. That's  
12 the only way I see her. She presents Juvenile cases in  
13 front of me.

14 MS. WILLIAMS: Did you understand the question,  
15 Judge?

16 Did you get the response you wanted, Paul?

17 MR. THOMAS: It was clear that he meant Varner, I  
18 think.

19 MS. WILLIAMS: Okay. But is the record clear?

20 BY MR. DELLASEGA:

21 Q What I was asking you was with regard to Barbara  
22 Graham?

23 A. Barbara Graham?

24 Q Yes, not Mrs. Varner.

25 A. I thought you just asked me about Mrs. Varner.

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1 Q No, no.

2 A. I didn't hear you correctly, then.

3 Q Maybe I misspoke. With regard to Barbara Graham, my  
4 question to you is: Within the bench of Cumberland  
5 County, does she have a reputation for truthfulness?

6 A. I think so, yes.

7 Q When you met with your staff and told them if necessary  
8 you would micromanage the office, and by staff I mean  
9 the Juvenile Probation Department, were you referring to  
10 anything other than the leadership deficiencies you had  
11 identified in these interviews?

12 A. Leadership, primarily, and the overall tenor of the  
13 office and the working relationships.

14 Q When Judge Sheely handed over the reins of office to you  
15 and communicated to you about the Varner-Graham problem,  
16 did he tell you whether or not there had been an affair?

17 A. He told me that Gary confessed to him in front of his  
18 wife in his office that there had been an affair.  
19 That's what he told me.

20 Q Did he tell you that he believed there had been an  
21 affair?

22 A. I don't remember whether he believed it or disbelieved  
23 it or whether he took a position.

24 MR. DELLASEGA: That's all. Thank you, Judge.

25 MR. ADAMS: I have no questions.

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1 MS. BLANCHARD: I have a couple questions.

2 BY MS. BLANCHARD:

3 Q Judge, my name is Kristin Blanchard and I represent  
4 Gary Graham. I'll try to speak up, I know I'm all the  
5 way down here at this end.

6 Did you talk to Gary Graham before you demoted him  
7 about the reasons for the demotion?

8 A. No, ma'am.

9 Q Were you interested in hearing Gary Graham's version of  
10 events prior to his demotion?

11 A. No, ma'am.

12 Q Why not?

13 A. I made up my mind.

14 Q Based upon what?

15 A. The report and the interviews with the various POs that  
16 I talked to.

17 Q Did you have any information regarding what Gary  
18 Graham's position on everything was?

19 A. I may have had some in some fashion, I don't know. But  
20 I didn't ask him anything.

21 Q Did it occur to you at that time that he may have had  
22 something to say that would have changed your mind or  
23 altered your decision to demote him?

24 A. Well, ma'am, I know there was a lawsuit going, and I had  
25 made up my mind, partially on the sexual allegations but

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1 even more so on the office leadership. So that was  
2 history.

3 Q And your decision that Gary -- strike that -- your loss  
4 of confidence in Gary's ability to manage, I believe  
5 those were your words, was based upon the contents of  
6 the Deluce report?

7 A. And my interviews with other people, other POs.

8 MS. BLANCHARD: That's all I have.

9 MS. WILLIAMS: Anybody else?

10 MS. WALLET: I have one question.

11 BY MS. WALLET:

12 Q Judge, can you hear me from here?

13 A. Keep your voice up, ma'am.

14 Q I will. Since you took office in the first Monday in  
15 January of 1998, have you promoted or approved the  
16 promotion of any probation officers?

17 A. Oh, I suppose I have. I had to get a replacement for  
18 Mr. Graham. I've also fired one person.

19 Q Okay. Did you promote Sam Miller?

20 A. I think I did.

21 Q Did you promote Denny Drachbar?

22 A. I think so, I'm not sure.

23 Q Did you promote Debra Green?

24 A. I don't remember anymore, ma'am. I'd have to look at  
25 the records.

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1 Q Are you aware of anyone who you promoted or you approved  
2 for promotion who is not the most senior individual?

3 A. I don't remember, ma'am.

4 MS. WALLET: That's all.

5 MS. WILLIAMS: Thank you very much, Judge.

6 MS. BLANCHARD: Thank you.

7 (Whereupon, the deposition was concluded at  
8 4:14 p.m.)

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COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.  
COUNTY OF DAUPHIN )

I, Emily R. Clark, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Dauphin, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

HON. GEORGE E. HOFFER

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Harrisburg, Pennsylvania, this 23rd day of April, 2003.

Emily R. Clark  
Reporter - Notary Public

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